

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6199**

**BILL NUMBER: SB 100**

**NOTE PREPARED: Dec 7, 2011**

**BILL AMENDED:**

**SUBJECT:** Sales and Use Tax.

**FIRST AUTHOR:** Sen. Broden

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill provides that for purposes of the Indiana sales and use tax law, a "retail merchant engaged in business in Indiana" includes any retail merchant who:

- (1) makes retail transactions in which a person acquires personal property or taxable services for use, storage, or consumption in Indiana; and
- (2) enters into an arrangement with any person, other than a common carrier, to facilitate the retail merchant's delivery of property to customers in Indiana by allowing customers to pick up property sold by the retail merchant at a place of business maintained by the person in Indiana.

It specifies that a retail merchant may not be required to collect and remit sales or use taxes unless:

- (1) the retail merchant has a physical presence in Indiana; *or*
- (2) the activities conducted in Indiana on behalf of the retail merchant are significantly associated with the retail merchant's ability to establish and maintain a market in Indiana.

This bill provides that a retail merchant is presumed to be engaged in business in Indiana if an affiliate of the retail merchant has substantial nexus in Indiana and certain additional conditions are satisfied. It provides that a retail merchant is presumed to be engaged in business in Indiana if the retail merchant enters into an agreement with one or more residents of Indiana under which the resident directly or indirectly refers potential customers to the retail merchant, if the cumulative gross receipts from the sales by the retail merchant to customers in Indiana who are referred to the retail merchant by all residents is greater than \$10,000 during the preceding 12 months. It also specifies that the presumptions may be rebutted.

**Effective Date:** July 1, 2012.

**Explanation of State Expenditures:** *Department of State Revenue (DOR):* This bill will result in an increase

in administrative costs for the DOR by requiring the DOR to revise sales tax forms as well as update computer software to incorporate the expansion of the definition of a retail merchant. It is estimated that the DOR will be able to implement this provision with its existing level of resources.

**Explanation of State Revenues:** *Impact on Sales Tax Revenue:* This bill expands the definition of who qualifies as a “retail merchant”. The definition would require certain electronic commerce (e-commerce) entities to remit sales tax. This bill would increase sales tax revenue by an indeterminable amount. The amount of the increase would depend on the extent to which the definition change influences the location decision of a business entity.

**Background Information:** The Main Street Fairness Act (HR 2701) was introduced in the U.S. House of Representatives on July 29, 2011, and was referred to the House Committee on the Judiciary. The Main Street Fairness Act which would allow states, provided they have met certain conditions, to require Internet and mail order retailers to collect sales tax. The legislation would allow any state that has adopted the Streamlined Sales and Use Tax Agreement to collect sales and use taxes from remote sellers. There are currently 24 member states in compliance with the Streamlined Sales and Use Tax Agreement, including Indiana.

A study conducted by the Indiana Fiscal Policy Institute and the Ball State University Center for Business and Economic Research examined how much revenue Indiana will lose in 2012 as a result of the absence of a tax on e-commerce transactions. The estimated revenue loss ranged from \$39.6 M to \$114.3 M. Additionally, the study examined the effect of a tax on e-commerce transactions on an e-commerce entity’s location decision and found no statistically significant relationship. A University of Tennessee study estimated e-commerce-related annual sales tax losses in Indiana at \$216.9 M for FY 2012.

Sales tax revenue is deposited in the state General Fund (99.848%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** Local revenues will be impacted to the extent that a local unit receives funds from the Commuter Rail Service Fund or the Industrial Rail Service Fund.

**State Agencies Affected:** DOR.

**Local Agencies Affected:**

**Information Sources:** *To Collect Sales Tax or Not: Indiana’s Ecommerce Conundrum - Determining the State’s Lost Sales Tax Revenue and Weighing the Amazon Tax Policy*, Indiana Fiscal Policy Institute, November 2011; Streamlined Sales Tax Governing Board, <http://www.streamlinedsalestax.org/>; H.R. 2701 Bill Text, S.1452 bill Text, Library of Congress.

**Fiscal Analyst:** Diana Agidi, 317-232-9867.